

Duane Morris

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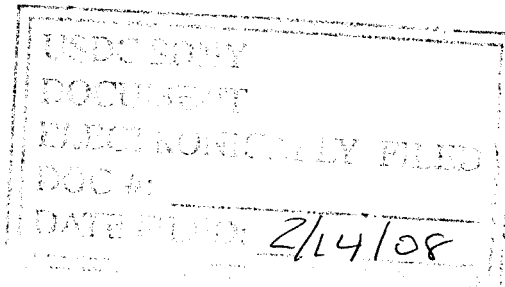
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February 5, 2008



BY HAND DELIVERY

Honorable Judge William H. Pauley III
United States District Court
Southern District of New York
500 Pearl Street, Room 2210
Courtroom 11D
New York, NY 10007



Re: Capitol Records, Inc. et al. v. MP3tunes LLC and Michael Robertson
Case No. 07 CIV 9931 (WHP)

Dear Judge Pauley:

We represent defendants, MP3tunes LLC and Michael Robertson (collectively "MP3tunes"), who contest personal jurisdiction in the above-referenced matter and who specially appear to request an extension of time to file a Motion to Dismiss to allow time for Judge William Q. Hayes of the Southern District of California to rule on the Motion to Dismiss currently under submission in the parallel case pending in that district.

As you may recall, there are two lawsuits pending directed to the same transactions or occurrences, namely the services offered on MP3tunes' websites, www.mp3tunes.com and www.sideload.com.

1. Southern District of California Suit: MP3tunes LLC filed an action against the plaintiffs and their parent corporations ("EMI") for violation of 17 U.S.C. § 512(f) of the Copyright Act, unfair competition, and declaratory relief, seeking relief associated with disputes over the validity of EMI's take down notice and alleged copyright infringement involving the mp3tunes.com and sideload.com websites. EMI filed a Motion to Dismiss seeking an exception to the First to File rule.
2. Southern District of New York Suit: EMI later filed the above-referenced action alleging copyright infringement and unfair competition involving the same mp3tunes.com and sideload.com websites. MP3tunes contests

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jurisdiction under the First to File rule and for lack of personal jurisdiction. This Court has granted an extension of time to file a Motion to Dismiss and ordered the parties to engage in jurisdictional discovery. The Court set a deadline of February 15, 2008 to file a Motion to Dismiss. MP3tunes' potential Motion to Dismiss, and likely this Court's ruling on said Motion, will be influenced by the ruling in the Southern District of California.

Judge Hayes took EMI's Motion to Dismiss under submission in December 2007. To date Judge Hayes has not yet entered its ruling on that Motion. Judge Hayes has not advised when he will enter its ruling; however, a clerk of the court did indicate that it was unlikely to rule before the February 15, 2008 deadline.

Thus, unless the deadline for MP3tunes LLC and Mr. Robertson to file their Motion to Dismiss in this Court is extended, we anticipate having two Motions to Dismiss pending at the same time, in two different judicial districts, each addressing whether to retain jurisdiction under the First to File rule. This inefficient use of judicial resources may lead to inconsistent results. Moreover, the ruling in the Southern District of California may render certain issues moot before this Court depending on how Judge Hayes rules.

MP3tunes has requested that the parties stipulate to an extension of time to file a Motion to Dismiss to allow the Southern District of California to rule on whether it will retain jurisdiction under the First to File rule. EMI would only agree to a 3 week extension and only if MP3tunes agreed not contest jurisdiction or venue in New York if Judge Hayes declined jurisdiction. MP3tunes declined this unreasonable condition.

In the interest of judicial efficiency and without waiving the right to contest personal jurisdiction, MP3tunes LLC and Michael Robertson request that this Court enter the proposed Order enclosed herewith and extend the deadline to file a responsive pleading in the instant matter until two weeks after the Southern District of California has ruled on the pending Motion to Dismiss.

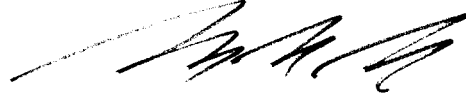
EMI not be prejudiced by this extension, but rather will benefit from the extension of time in that it will have additional time to copy and review electronic jurisdictional discovery, which has EMI has yet to start. Thus far, MP3tunes has agreed to make available approximately 150-250 Gigabytes of electronic data. EMI demands further discovery, which if allowed, would comprise an estimated 300 Terabits (300,000 Gigabytes) of electronic data or approximately 400 million files. It will take quite some time to get this amount of data copied, let alone reviewed. Additionally, EMI will benefit in that it will not expend resources to brief issues that may be made moot by the Southern District of California court ruling.

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For these reasons, defendants MP3tunes and Michael Roberts respectfully request that the Court enter the attached order extending the time for them to file their motion to dismiss until 14 days after the Southern District of California rules on the motion to dismiss currently pending there.

Very truly yours,



Gregory P. Gulia

GPG/slj
Enclosure

cc: Andrew H. Bart, Esq. (attorney for Plaintiffs)(via email and fax per electronic service agreement)

The Court will hold
a conference on
February 15, 2008 at
10:30 a.m.

SO ORDERED:


WILLIAM H. PAULEY III U.S.D.J.